IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 272 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME TAX

Versus

MOHANLAL AND COMPANY

Appearance:
MR BB NAIK with MR MANISH R BHATT for Petitioner
NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE M.S.SHAH

Date of decision: 22/01/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE J.M.PANCHAL)

At the instance of the revenue, the Income Tax Appellate Tribunal, Ahmedabad Bench "C" has referred the

following question of law for the opinion of this Court in respect of assessment year 1971-72 :-

"Whether, on the facts and in the circumstances of the case, and in law, the Appellate Tribunal was right in holding that the Inspecting Assistant Commissioner of Income-tax had no jurisdiction to impose the penalty in this case?"

2. The ITO made certain additions to the total income of the assessee and referred the matter for penalty to the Inspecting Assistant Commissioner vide his notice dated 19.12.1973 which was issued under Section 274 of the Income Tax Act. The Inspecting Assistant Commissioner heard the matter on May 13 & 21, 1980 and imposed penalty of Rs. 60,000/-. In appeal, the CIT(A) held that in view of the amendments brought about by Sections 48, 60 and 61 of the Amending Act, 1975, the Inspecting Assistant Commissioner had no power or jurisdiction to levy a penalty under Section 271(1)(c) with effect from 1.4.1976. In view of the said conclusion, the CIT(A) set aside the penalty imposed by the Inspecting Assistant Commissioner. In appeal by the revenue, the Tribunal has confirmed the view taken by the CIT(A). On a reference application being filed, the Tribunal has referred the above referred to question of law for our opinion.

3. Though served, none appears on behalf of the respondent. We have heard the learned counsel for the applicant. The learned counsel for the applicant states that the question raised in the present reference is concluded in favour of the revenue by the decision of the Supreme Court in CIT vs. Dhadi Sahu, (1993) 199 ITR 610. In the said case, the respondent had failed to disclose in his return the income falling to the share of his minor children from house property for the assessment year 1968-69 and 1969-70. The ITO passed the assessment orders on 28.2.1970 and initiated penalty proceedings under Section 271(1)(c) of the Act. Since the penalty to be imposed was to exceed Rs.1,000/-, the ITO referred the case under Section 274(2) as it then stood, to the Inspecting Assistant Commissioner. Pending the proceedings, Section 274(2) was amended with effect from 1.4.1971, as a result of which only cases of penalty in which the income concealed was Rs.25,000/- or more were to be referred to the Inspecting Assistant Commissioner. In the cases referred to the Inspecting Assistant Commissioner the income concealed was less than Rs.25,000/-. On 15.2.1973, the Inspecting Assistant Commissioner passed orders imposing penalty of

Rs.24,000/- and Rs.12,500/- respectively for the two assessment years. On appeal, the Appellate Tribunal cancelled the penalty holding that in view of the amendment of Section 274(2), the Inspecting Assistant Commissioner lost his jurisdiction. On a reference, the High Court affirmed the decision of the Tribunal. On appeal, while reversing the decision of the High Court, the Supreme Court has held as under :-

"The reference of the cases was validly made by the Income-tax Officer before April 1, 1971, and the Inspecting Assistant Commissioner validly acquired jurisdiction to pass the orders imposing penalty. The amending Act did not make any provision that references validly pending before the Inspecting Assistant Commissioner should be returned without any final order being passed. The previous operation of section 274(2) as it stood prior to April 1, 1971, and anything done thereunder continued to have effect under section 6(b) of the General Clauses Act, 1987, enabling the Inspecting Assistant Commissioner to pass orders imposing penalty in pending references. What was material to be seen was as to when the reference was initiated. If the reference was made before April 1, 1971, it would be governed by section 274(2) as it stood before that date and the Inspecting Assistant Commissioner would have jurisdiction to pass the order of penalty".

4. Applying the principle laid down by the Supreme Court in the above referred to decision to the facts of the present case, we find that the reference of the cases was validly made by the ITO before April 1, 1976 and the Inspecting Assistant Commissioner validly acquired jurisdiction to pass the orders imposing penalty. The amending Act did not make any provision that references validly pending before the Inspecting Assistant Commissioner should be returned without any final order being passed. Under the circumstances, we are of the opinion that on the facts and in the circumstances of the case and in law, the Appellate Tribunal was not right in holding that the Inspecting Assistant Commissioner of Income-tax had no jurisdiction to impose the penalty in this case.

The reference is accordingly answered in the negative i.e. in favour of the revenue and against the assessee. The reference is disposed of accordingly with no order as to costs.

(J.M. Panchal, J.)

(M.S. Shah, J.)

sundar/-